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| CLERK U S DISTRICT COURT DISTRICT OF ARIZONA | |
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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

United States of America,
Plaintiff,

v.

1. Kenneth D. Perkins
(Counts 1-19);
2. Robert L. Burdiak
(Counts 1-7, 12-13, 19);
Defendants.

CR 09 - 388 PHX DGC ECV

INDICTMENT

VIO: 18 U.S.C. § 1343 and 1346
(Wire Fraud)
Counts 1-7

18 U.S.C. § 1001
(False Statements)
Counts 8-13

18 U.S.C. § 1014
(False Statements to Financial
Institution)
Counts 14-18

18 U.S.C. § 371
(Conspiracy)
Count 19

THE GRAND JURY CHARGES:

COUNTS 1-7

I. At all times material to this Indictment:

INTRODUCTION

1. The Department of Housing and Urban Development (HUD) was an agency of the Executive Branch of the Government of the United States which operated a residential mortgage loan insurance program. Under the program, the Federal Housing Administration (FHA), an organization within HUD, insured lending institutions against loss in the event homeowners defaulted on mortgages that had been insured by HUD.

2. HUD had in place a “Pre-foreclosure Sale Program” (“PFSP”) administered by participating lending institutions in accordance with HUD guidelines. The PFSP allowed homeowners with loans in default to sell their homes and use the sale proceeds to satisfy the mortgage debts - even if the proceeds were less than the amounts owed. Under the program, HUD then paid the outstanding mortgage balances, and associated expenses, to the lending institutions upon a submission of claim for FHA insurance claims.

3. In order to minimize losses and expenses to HUD, the PFSP specified that a homeowner had to apply for and be approved by his lending institution to participate in the program, that a homeowner approved to participate in the program list his property for sale with a licensed realtor and market said property at a price at or near its appraised value for a period of four to six months, and that there must not be any hidden terms or special understandings that exist between any of the parties involved in the transaction. In other words, any sale must be an arm's length transaction in order to secure the highest selling price and minimize losses to HUD. The program also provides that the "net" amount payable to HUD as a result of the sale, after allowing expenses such as real estate commissions, be at least 82% of the appraised value.

4. Once an owner is approved for a PFSP, the lender will postpone foreclosure. Borrowers who successfully sell their properties are relieved of their mortgage obligation and shall not be pursued for deficiency judgments by either the lender or HUD.

DEFENDANTS

5. Kenneth D. Perkins (hereinafter PERKINS) was a real estate agent and real estate investor who operated an investment company called Virtual Realty Funding Company, L.L.C. ("VRF") and a real estate brokerage called Virtual Realty Company, L.L.C. ("VRC"). Both companies had the same domestic address in Chandler, Arizona. As described below, although purporting to be the realtor for various properties whose owners qualified to participate in the PFSP, PERKINS did not market these properties and instead purchased them at a discount of as much as 82% of the appraised value utilizing a straw-buyer, a company called PLAYER, to

1 the financial detriment of HUD. PERKINS then either sold these properties for a profit or leased
2 them.

3 6. Defendant Robert L. Burdiak (hereinafter "BURDIAK") was a construction contractor
4 and business associate of PERKINS. BURDIAK was listed with the Arizona Corporation
5 Commission as a member of a Gilbert, Arizona-based company called Player Realty and
6 Investments, L.L.C. ("PLAYER"). As stated above, BURDIAK through PLAYER purportedly
7 purchased the properties from owners participating in the PFSP at a discount when in fact
8 PERKINS purchased said properties. PERKINS used BURDIAK and PLAYER to make it
9 appear as though the properties had been sold in arm's length transactions and otherwise
10 marketed in accordance with the requirements of PFSP in order to secure the highest price.

11 **SCHEME TO DEFRAUD**

12 7. From on or about May 2003 through June 2004, in the District of Arizona and
13 elsewhere, defendants PERKINS and BURDIAK, individually and as owners and agents of
14 Virtual Realty Funding Company, LLC (hereafter "VRF"), Virtual Realty Company, LLC
15 (hereafter "VRC") and Player Realty Investments, LLC (hereafter "PLAYER"), along with
16 others, aiding and abetting each other, did knowingly and intentionally devise a scheme and
17 artifice: a.) to defraud HUD and to obtain money or property from HUD by means of materially
18 false and fraudulent pretenses, promises and representations, knowing them to be false; and b.)
19 to deprive HUD of the honest services of the lending institutions that administered the HUD Pre-
20 Foreclosure Sale Program ("PFSP") with regard to various owners and their properties.

21 **OBJECT OF THE SCHEME TO DEFRAUD**

22 8. PERKINS purchased the properties of homeowners participating in the PFSP for a
23 HUD-subsided discount of as much as 82% of their appraised value less real estate commissions
24 and then sold them for a profit or leased them. BURDIAK through PLAYER acted as the straw
25 buyer of these properties at the direction of PERKINS to conceal the fact that PERKINS was
26 purchasing them and to also make it appear as though the properties had been sold in arm's
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1 length transactions and otherwise marketed in accordance with the requirements of PFSP in
2 order to secure the highest price.

3 MEANS AND METHODS

4 To carry out the scheme to defraud, defendants employed the following means:

5 9. PERKINS or an employee of VRF and/or VRC, at his direction, approached
6 homeowners facing foreclosure and offered to purchase their homes. Unbeknownst to them,
7 PERKINS would cause these homeowners to sign paperwork allowing him or another
8 representative of VFR/VRC to arrange their participation in HUD-PFSP through their lending
9 companies.

10 10. PERKINS and other VRC representatives, operating at his direction, would then
11 prepare and submit documents necessary for participation in HUD's Pre-foreclosure Sale
12 Program ("PFSP") to the mortgage companies. Some of these documents were false in material
13 ways, including, but not limited to the following: (1) Exclusive Right to Sell Listing Contracts
14 between the owner and VRC, requiring VRC, as the realtor, to endeavor to sell the property for
15 a certain price, within a set time period and to list the property through ARMLS; (2) Residential
16 Resale Real Estate Purchase Contracts falsely reflecting PLAYER as the buyer and signed by
17 BURDIAK; and (3) Closing Worksheets signed by the owner and PERKINS on behalf of the
18 VRC falsely representing to HUD/FHA that there are no hidden terms or special understanding
19 with the seller and buyer.

20 11. As aforementioned, it was a requirement that a homeowner approved by the lending
21 institution to participate in the PFSP list his property for sale with a licensed realtor and
22 aggressively market said property at or near its appraised value for a period of four to six
23 months, and that there must not be any hidden terms or special understandings that exist between
24 any of the parties involved in the transaction. In other words, any sale must be an arm's length
25 transaction in order to secure the highest selling price and minimize losses to HUD. The program
26 required that the "net" amount payable to HUD as a result of the sale, after allowable expenses
27 such as real estate commissions be at least 82% of the appraised value.

1 12. It was a critical part of the scheme to defraud that PERKINS did not attempt to
2 market the properties as required by the PFSP and instead purchased them at a HUD-subsidized
3 discount for an amount sometimes as low as 82% of the appraised price yet also earned sales
4 commissions as the real estate agent for the seller and the purchaser sometimes by utilizing a
5 straw-realtor to circumvent the lenders' proscriptions against a single realtor receiving all 6%
6 of the sales commission for representing both buyer and seller.

7 13. At the direction of PERKINS, BURDIAK signed the Real Estate Contracts on behalf
8 of PLAYER as purchaser although PERKINS, through his company, VRF, actually purchased
9 said properties.

10 14. At the instruction of PERKINS, BURDIAK on behalf of PLAYER also signed the
11 HUD-1 Settlement Statements falsely stating PLAYER had purchased the property from the
12 owner.

13 15. By means of sham transactions and false representations, PERKINS concealed from
14 the lending companies administering the PFSP, and thus HUD, that he had circumvented its
15 requirements and objective in that he had not endeavored to marketed the properties in an arm's
16 length transaction.

17 16. After purchasing the properties at a discount, PERKINS sold them for a profit,
18 generally within a short time span, or rented them back to the original owner.

19 17. PERKINS acquired approximately twenty properties at a discount which resulted
20 in HUD as the insurer of their mortgages paying an additional sum of a substantial amount to
21 the lenders.

22 18. On or about the dates set forth below, in the District of Arizona and elsewhere, for
23 the purpose of executing said scheme to defraud HUD and to obtain money or property from
24 HUD by means of materially false and fraudulent pretenses, defendants PERKINS and
25 BURDIAK, and others known and unknown to the Grand Jury, did knowingly transmit, or cause
26 to be transmitted, by means of wire and radio communications in interstate commerce, certain
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writings, pictures, signals and sounds, to or from the District of Arizona, as set forth in the chart below, each being a separate Count of the Indictment.

| Count | Date | Documents | From | To |
|-------|---------|--|---------|---------|
| 1 | 4/14/04 | Residential Resale Real Estate Purchase Contract and 2 HUD-1 Settlement Statements for 2942 East Irwin Avenue, Mesa, Arizona | Arizona | Texas |
| 2 | 4/19/04 | Amendment to Escrow Instructions for 2942 East Irwin Avenue, Mesa, Arizona | Arizona | Texas |
| 3 | 4/19/04 | HUD-1 Settlement Statement (Amended) for 2942 East Irwin Avenue, Mesa, Arizona | Arizona | Texas |
| 4 | 4/28/04 | HUD PFSP Application to Participate for owner of 8721 West Bobby Lopez Drive, Tolleson, Arizona and Home Ownership Counseling Certification. | Arizona | Florida |
| 5 | 4/28/04 | HUD-1 Settlement Statement and Residential Resale Real Estate Purchase contract for 8721 West Bobby Lopez Drive, Tolleson, Arizona | Arizona | Florida |
| 6 | 5/24/04 | HUD-1 Settlement Statement and Exclusive Right to Sell Listing Contract for 8721 West Bobby Lopez Drive, Tolleson, Arizona | Arizona | Florida |
| 7 | 6/4/04 | Closing Worksheet (PFSP) for 8721 West Bobby Lopez Drive, Tolleson, Arizona | Florida | Arizona |

All in violation of Title 18, United States Code, Sections 1343 and 1346 and 2.

COUNTS 8-11

The Grand Jury realleges and incorporates by reference paragraphs 1-6 and 8-18 of the Indictment and further alleges as follows:

19. On the dates set forth below, in the District of Arizona, defendants PERKINS knowingly did make, and cause to be made, false statements and representations, as to material facts, in a matter within the jurisdiction of the Department for Housing and Urban Development ("HUD"), an agency of the Executive Branch of the Government of the United States, in that PERKINS signed or caused someone to sign HUD Pre-Foreclosure Sale Program Closing Worksheets for various properties as "broker/realtor" and therein certified "...that there are no hidden terms or special understandings with the buyer, seller, appraiser, closing agent or

mortgagee.”, whereas, as PERKINS well knew, he purchased said properties at a discount using BURDIAK through PLAYER as a straw-buyer to conceal his interest and actions. These false Pre-Foreclosure Sale Program Closing Worksheets were submitted to the lending institutions administering the PFSP and acting as agents for HUD as follows:

| Count | Date | Property | Institution |
|-------|---------|--|--------------------------------------|
| 8 | 4/9/04 | 4309 West Earll Drive, Phoenix, Arizona | Chase Manhattan Mortgage Corporation |
| 9 | 4/13/04 | 5569 West La Reata Avenue, Phoenix, Arizona | Chase Manhattan Mortgage Corporation |
| 10 | 4/13/04 | 2942 East Irwin Avenue, Mesa, Arizona | Washington Mutual Bank |
| 11 | 6/4/04 | 8721 West Bobby Lopez Drive, Tolleson, Arizona | Washington Mutual Bank |

All in violation of Title 18, United States Code, Sections 1001 and 2.

COUNTS 12-13

The Grand Jury realleges and incorporates by reference paragraphs 1-6 and 8-18 of the Indictment and further alleges as follows:

20. On or about the dates set forth below, in the District of Arizona, defendants PERKINS and BURDIAK did knowingly and willfully make materially false, fictitious, or fraudulent statements or representations, as to material facts, in a matter within the jurisdiction of the Department of Housing and Urban Development (“HUD”), an agency of Executive Branch of the Government of the United States, in that BURDIAK signed HUD 1 Settlement Statements on behalf of PLAYER as the buyer of the following described properties at the direction of PERKINS when, in fact, PERKINS and BURDIAK well knew that PERKINS, not PLAYER, was the buyer and provided the funds for the purchase as reflected therein. The defendants submitted or caused to be submitted the false HUD-1 Settlement Statements to the lending institutions administering the HUD-PFSP with respect to the properties listed below:

| Count | Date | Property | Institution |
|-------|------|----------|-------------|
|-------|------|----------|-------------|

| | | | |
|----|---------|---------------------------------------|--------------------------------------|
| 12 | 4/16/04 | 5569 West La Reata, Phoenix, Arizona | Chase Manhattan Mortgage Corporation |
| 13 | 5/17/04 | 2942 East Irwin Avenue, Mesa, Arizona | Washington Mutual Bank |

All in violation of Title 18, United States Code, Sections 1001 and 2.

COUNTS 14-18

The Grand Jury realleges and incorporates by reference paragraphs 1-6 and 8-18 of the Indictment and further alleges as follows:

21. On the dates set forth below, in the District of Arizona, defendant PERKINS did knowingly make and cause to be made materially false statements as described below to lending institutions, the accounts of which were insured by the Federal Deposit Insurance Corporation, for the purpose of influencing said institutions to approve the owners participation in the HUD Pre-Foreclosure Sale Program:

| Count | Date | Financial Institution | Activity |
|-------|---------|-------------------------------|--|
| 14 | 4/4/03 | Wells Fargo Home Mortgage | Perkins, or others operating at his direction, submitted to Wells Fargo an Exclusive Right to Sell Listing Contract reflecting that he would market for sale as the realtor, VRC, a PFS-qualified home located at 6502 West Paradise Lane, Glendale, Arizona between March 20, 2003 and July 31, 2003, when, in fact, no such marketing was done, and Perkins ultimately purchased the home himself at a HUD-subsidized discount. |
| 15 | 5/23/03 | Washington Mutual Bank (WAMU) | Perkins, or others operating at his direction, submitted to WAMU an Exclusive Right to Sell Listing Contract reflecting that he would market for sale as the realtor, VRC, a PFS-qualified home located at 6603 North 46 th Drive, Glendale, Arizona between March 26, 2003 and July 31, 2003, when, in fact, no such marketing was done, and Perkins ultimately purchased the home himself at a HUD-subsidized discount. |

| | | | |
|----|---------|-------------------------------|--|
| 16 | 9/16/03 | Wells Fargo Home Mortgage | Perkins, or others operating at his direction, submitted to Wells Fargo an Exclusive Right to Sell Listing Contract reflecting that he would market for sale as the realtor, VRC, a PFS-qualified home located at 940 East Winston Drive, Phoenix, Arizona between September 1, 2003 and November 31, 2003, when, in fact, no such marketing was done, and Perkins ultimately purchased the home himself at a HUD-subsidized discount. |
| 17 | 3/8/04 | Regions Bank | Perkins, or others operating at his direction, submitted to Regions a HUD-Pre-foreclosure Sale Program Closing Worksheet for 12501 W. Pershing, El Mirage, Arizona bearing Perkins' signature as the sales agent and the following statement: "By signing, the Agent/Broker certifies that there are no hidden terms or special understandings with the buyer, seller, appraiser, closing agent or mortgagee." The document bears the name "Player Realty" as the purchaser; however, the actual buyer was Perkins, using Player Realty to conceal his interest. |
| 18 | 6/4/04 | Washington Mutual Bank (WAMU) | Perkins, or others operating at his direction, submitted to WAMU a HUD-Pre-foreclosure Sale Program Closing Worksheet for 8721 West Bobby Lopez Drive, Tolleson bearing Perkins' signature as the sales agent and the following statement: "By signing, the Agent/Broker certifies that there are no hidden terms or special understandings with the buyer, seller, appraiser, closing agent or mortgagee." The document bears the name "Player Realty and Investment Company" as the purchaser; however, the actual buyer was Perkins, using Player Realty to conceal his interest. |

All in violation of Title 18, United States Codes, Sections 1014 and 2.

COUNT 19

The Grand Jury realleges and incorporates by reference paragraphs 1-6 AND 8-18 of the Indictment and further alleges:

22. Beginning on or about September 2003 and continuing through June 2004, in the District of Arizona and elsewhere, defendants PLAYER and BURDIAC, and others known and unknown to the Grand Jury, knowingly and willfully combined, conspired, confederated and agreed with each other and others, to (1) defraud the United States by deceitful and dishonest means for the purpose of impeding, impairing, obstructing and defeating, by any manner and means, the lawful government functions of HUD, an agency of the United States, whose purpose

1 was to administer and maintain the integrity of the Pre-Foreclosure Sale Program, and (2) to
2 commit the following offenses against the United States:

3 (a) Title 18, United States Code, Section 1343 (Wire Fraud)

4 (b) Title 18, United States Code, Section 1001 (False Statements)

5 (c) Title 18, United States Code, Section 1014 (False Statement to a Financial Institution)

6 **OVERT ACTS**

7 23. In furtherance of the conspiracy, defendants PERKINS and BURDIAC, along with
8 others, committed one or more of the following overt acts, among others:

9 a. On May 23, 2003, PERKINS, or others operating at his direction, submitted to
10 Washington Mutual Bank an Exclusive Right to Sell Listing Contract reflecting that VRC would
11 market for sale a PFSP qualified house located at 6603 North 46th Street, Glendale, Arizona
12 between March 26, 2003 and July 31, 2003.

13 b. On November 24, 2003, PERKINS, or others operating at his direction,
14 submitted an Application to Participate (Pre-Foreclosure Sale Procedure) to Chase Manhattan
15 Mortgage Corporation on behalf of Apolonia Mendoza with respect to 4309 East Earll Drive,
16 Phoenix, Arizona 85031.

17 c. On April 14, 2004, PERKINS caused VRF to fax a Residential Real Estate
18 Purchase Contract for 2942 East Irwin Avenue, Mesa, Arizona and signed by BURDIAC on
19 behalf of PLAYER from Arizona to Washington Mutual Bank in Texas.

20 d. On April 30, 2004, PERKINS submitted or caused to be submitted a HUD
21 Closing Worksheet (Pre-Foreclosure Sale Program) for 2942 East Irwin Avenue, Mesa, Arizona
22 to Washington Mutual Bank bearing his signature as realtor and certifying as agent/broker
23 "... that there are no hidden terms or special understandings with the buyer, seller, appraiser,
24 closing agent or mortgagee."

25 e. On May 17, 2004, PERKINS and BURDIAC submitted or caused to be
26 submitted a HUD-1 Settlement Statement for 2942 East Irwin Avenue, Mesa, Arizona to
27 Washington Mutual Bank stating PLAYER is the purchaser and bearing BURDIAC's signature.
28

1 f. On June 6, 2004, PERKINS submitted or caused to be submitted a HUD
2 Closing Worksheet (Pre-Foreclosure Sale Procedure) for 8721 West Bobby Lopez Drive,
3 Tolleson, Arizona to Washington Mutual Bank (WAMU) bearing his signature and certifying
4 as agent or broker "... that there are no hidden terms or special understandings with the buyer,
5 seller, appraiser, closing agent or mortgagee."

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7 All in violation of Title 18, United States Code, Section 371.

8 A TRUE BILL

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10
11 /S/
FOREPERSON OF THE GRAND JURY
Date: April 8, 2009

12 DIANE J. HUMETEWA
13 United States Attorney
14 District of Arizona

15
16 /S/
STEPHEN W. LARAMORE
17 Assistant U.S. Attorney